

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5975 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ZOHRAKHATUN ABDULBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR GR SHAIKH for Petitioner

Mr. S.T.Mehta, ASSTT. GOVERNMENT PLEADER for the  
Respondent.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 19/08/98

ORAL JUDGEMENT

By means of this petition, the petitioner has challenged the order dated 23.3.1988 of the Competent Authority and Additional Collector, Urban Land Ceiling, Ahmedabad in case no.1534 /ULC-U/4/K-1-48-Makarba whereby the land of survey no. 107/8/1/1 was declared as surplus open land. Being aggrieved by the order of the Competent

Authority, the petitioner preferred an appeal before Urban Land Ceiling Tribunal and Ex-officio Additional Chief Secretary, Revenue Department, Gujarat. On the date of the hearing, neither the petitioner nor her advocate was present to argue the case. The Tribunal, finding no document in support of the grounds taken in appeal, dismissed the appeal.

2. The learned counsel for the petitioner pointed out that there are three properties which have been considered by the authorities below for declaring surplus land.

(1) Survey no.107/A/1/1 of village Makarba which is 2326 sq.mtrs in which the petitioner has only 1/2 share and other half share has been declared to be holding of Fatimaben by an order dated 14.7.88 by the competent authority. The petitioner in her portion has built up area of 475.45 sq.mtrs.

(2) Survey no. 441 of village Dariapaur in area 74 sq.mtrs.i.e. constructed area, (3)survey no.65 of village Vatwa, 238 sq.mtrs.

Thus, the petitioner has built up area of 549.45 sq.mtrs. The petitioner possesses total area of 1400 sq.mtrs, out of which she has 549.45 sq.mtrs. built up area. If constructed area is reduced from the area, it would be less than 1000 sq.mtrs. for which she is entitled under law. This court cannot make calculation without hearing other side. It would be just and proper for the competent authority to decide the matter in dispute after considering the evidence, if any, filed by the petitioner in accordance with the provisions of law.

4. Thus, I think it proper to remand the matter to the competent authority who shall decide the matter in accordance with law after considering the evidence that may be led before him by the parties.

5. Accordingly, the order dated 23.3.88 passed by the Competent Authority and Additional Collector, Urban Land Ceiling, Ahmedabad and the order dated 28.2.90 of the Urban Land Tribunal and Additional Chief Secretary at Annexuresd "A" and "B" respectively are hereby quashed and set aside. The matter is remanded to the Competent Authority and Additional Collector, Ahmedabad who, after considering the evidence of the parties, if any, shall decide the matter afresh on merits and in accordance with law, within a period of four months from the date of receipt of certified copy of this

judgment. Rule is made absolute accordingly with no  
order as to costs.

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